

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:)
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)
VERIZON INTERNET SERVICES, INC.)
Subpoena Enforcement Matter)
_____)
)
RECORDING INDUSTRY)
ASSOCIATION OF AMERICA)
)
v.)
)
)
VERIZON INTERNET SERVICES, INC.)
_____)

Miscellaneous Action
Case No. 1:02MS00323 (JDB)

**RECORDING INDUSTRY ASSOCIATION OF AMERICA'S
MOTION FOR LEAVE TO FILE THE SUPPLEMENTAL DECLARATION
OF JONATHAN WHITEHEAD**

The Recording Industry Association of America ("RIAA") hereby moves for leave to file the supplemental declaration of Jonathan Whitehead, in Opposition to Verizon Internet Services, Inc.'s ("Verizon's") Motion for Stay Pending Appeal (the "Opposition").

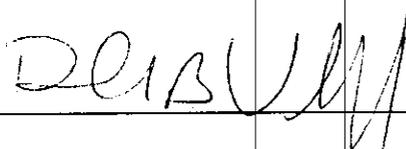
On February 7, 2003, RIAA filed with its Opposition a declaration from Jonathan Whitehead, the Vice President and Anti-Piracy Counsel, Internet and New Media for RIAA. The primary purpose of Mr. Whitehead's original declaration was to elucidate a series of communications between Mr. Whitehead and Dave Baker, the Vice President, Law and Public Policy at EarthLink Network, Inc. ("EarthLink"). These communications pertained to a July 25, 2002 RIAA subpoena served on EarthLink. EarthLink had agreed to comply with the subpoena if this Court ordered Verizon to comply with the subpoena at issue in this case. As noted in the

Whitehead declaration, since the date of this Court's order, EarthLink had not responded to RIAA's requests that it comply with the July 25, 2002 subpoena.

Several hours after RIAA's filing of Mr. Whitehead's original declaration on February 7, 2003, Mr. Whitehead received an additional electronic communication from Mr. Baker regarding RIAA's July 25, 2002 subpoena. In order to more accurately reflect the entirety of their communications on this issue, RIAA asks this Court for leave to supplement Mr. Whitehead's declaration to reflect the latest exchange between them. As the supplemental Whitehead declaration indicates, EarthLink's communication on February 7 states that EarthLink is continuing to refuse to comply with the subpoena, citing Verizon's pending motion for a stay as a basis. This further demonstrates that the entry of a stay pending appeal will be taken by ISP's, such as Verizon and EarthLink, as a de facto injunction pending appeal of the subpoena provision enacted by Congress in 17 U.S.C. § 512(h).

RIAA attempted to reach counsel for Verizon, but at the time of this filing had not yet heard whether Verizon consents or objects to the filing of this supplemental motion.

Respectfully submitted,

By: 

Of Counsel:

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Attorneys for the Recording Industry Association of
America

Dated: February 10, 2003

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Miscellaneous Action
Case No. 1:02MS00323
Honorable John Bates

**PROPOSED ORDER GRANTING RIAA'S MOTION FOR LEAVE TO FILE THE
SUPPLEMENTAL DECLARATION OF JONATHAN WHITEHEAD**

IT IS HEREBY ORDERED, that RIAA's Motion for Leave to File the Supplemental
Declaration of Jonathan Whitehead is hereby GRANTED;

Dated Feb. _____, 2003

The Honorable Judge John Bates

NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDER UPON ENTRY

Pursuant to Local Civil Rule of Procedure 7.1(k), listed below are the names and addresses of all attorneys entitled to be notified of the proposed order's entry.

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Supplemental Declaration of Jonathan Whitehead in Opposition To Verizon Internet Services, Inc.'s Motion for Stay Pending Appeal

I, Jonathan Whitehead, have personal knowledge of the facts stated below and, under penalty of perjury, hereby declare:

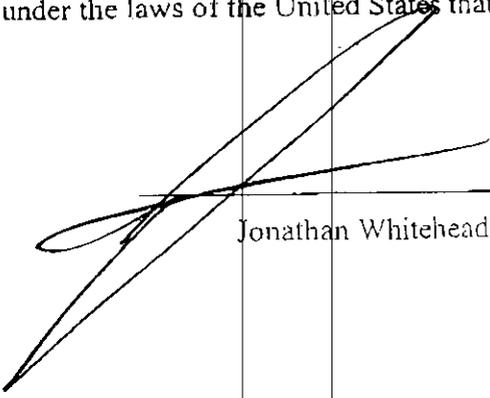
1. I am Vice President and Anti-Piracy Counsel, Internet and New Media for the Recording Industry Association of America ("RIAA"). I submit this supplemental declaration in support of RIAA's Opposition to Verizon Internet Service Inc.'s ("Verizon's") Motion for a Stay Pending Appeal ("Opposition to Verizon's Motion for a Stay").

2. On February 7, 2003, following the filing of RIAA's Opposition to Verizon's Motion for a Stay, I received an e-mail from Dave Baker, the Vice President, Law and Public Policy at EarthLink Network, Inc ("EarthLink"). Mr. Baker indicated that EarthLink viewed its obligation to comply with RIAA's July 25, 2002 subpoena as an open issue due to Verizon's

pending motion to stay the District Court's decision. Mr. Baker further stated that EarthLink would comply at such time as Verizon receives a final order to comply with the subpoena.

3. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: February 10, 2003



Jonathan Whitehead

CERTIFICATE OF SERVICE

I certify that on Monday, February 10, 2003, I caused RIAA's Motion for Leave to File a Supplemental Declaration of Jonathan Whitehead to be delivered via U.S. Mail, along with courtesy copies via electronic transmission, to the following recipients:

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